IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.67 of 1996
Date of Decision:7.11.2006

The Commissioner of Income-tax, Patiala
.....Petitioner

Vs.

M/s Span Motels Pvt. Ltd., Kulu
.....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. S.K.Garg Narwana, Advocate for the Revenue.

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ADARSH KUMAR GOEL, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, `the Tribunal') arising out of its order dated 19.7.1995 passed in I.T.A. No.809/Chandi/1990, in respect of the assessment year 1985-86:-

> "Whether on the facts and circumstances of the case, the I.T.A.T was right in law in deleting the addition of Rs.52004/- made by the A.O u/s 41(1) which was upheld by the first appellate authority?"

The assessee claimed deduction of bonus payable for the assessment year 1983-84 and 1984-85. The amount of bonus payable was never paid and was shown amount outstanding in the books of account of assessee for the year 1985-86. The said amount was included by the Assessing Officer liable to tax for the assessment year 1985-86.

The C.I.T.(A) upheld the view of the Assessing Officer.

The Tribunal accepted the appeal of the assesee on the ground that assessee had not made any entry in the books of account writing off the

liability or writing back the amount in the profit and loss account.

The Tribunal while accepting the plea of the assesse, had relied upon a judgment of the Calcutta High Court in **CIT Vs. Sugauli Sugar Work Private Limited, (1983) 140 ITR 286** which judgment has been affirmed by Hon'ble the Supreme Court in **(1999) 236 ITR 518**. From the facts found by the Tribunal, it is evident that the assessee had claimed the amount of Rs.52,004/- as reduction on account of bonus in the assesment years 1983-84 and 1984-85. The amount could not be paid as the labourers being migatory in character did not turn up to claim their bonus otherwise the liability of the assessee had not ceased and nothing had happened in the assessment year in question to lead the Assessing Officer to the conclusion that there had been a cessation of liability on the part of recipient. The claim of the assessee was that it was morally and legally bound to pay the bonus to the labourers as and when the claim is made. The cessation of liability cannot be on account of a unilateral act of the assessee as a debtor as the same is possible only on account of a bilateral act of both the creditor and the debtor. It was also considered that even if the claim is barred by limitation, the same merely bars the remedy but does not wipe out the liability. It has further been noticed that as the labourers did not claim the amount for quite some time, the assessee itself offered same for assessment in the year 1984-85.

We have perused the findings recorded by the Tribunal and also judgment of Hon'ble the Supreme in **Sugauli Sugar Work Pvt. Ltd. (supra)** wherein the view taken by Calcutta High Court was affirmed and the judgment of Full Bench of Gujarat High Court in **CIT Vs. Bharat Iron and Steel Industries, (1993) 199 ITR 67**, the judgment of Bombay High Court in **J.K.Chemicals Ltd. Vs. CIT, (1966) 62 ITR 34** were approved.

In our view, following the enunciation of principles as settled by Hon'ble the Supreme Court in **Sugauli Sugar Work's case (supra)** in the facts and circumstances of the present case, there was no valid reason that Assessing Officer during the assessment year in question to treat the liability on account of bonus payable to the labourers having ceased so as to invoke provisions of Section 41 of the Act to treat the same as income of the assessee during the year in question.

For the reasons stated above, the question referred is answered

against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

November 7, 2006 **(RAJESH BINDAL)**
renu **JUDGE**